

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 10553 of 2006(F)

AGAINST THE ORDER IN IN IA 2415/2005 IN
OS.285/2004 of MUNSIF COURT, MAVELIKKARA
.....

PETITIONER:

RUKHIYA BEEVI, W/O. HANEEFA RAWTHER,
PLAMOOTTIL VEEDU, CHUNAKKARA THEKKUM MURI,
CHUNAKKARA VILLAGE.

BY ADV. SRI.R.REJI
SMT.SHIVA RAJA RESHMI

RESPONDENTS:

LATHEEF, MUKALUVILA PADINJATTETHIL
CHUNAKKARA THEKKUM MURI, CHUNAKKARA VILLAGE.

BY ADV. SRI.C.RASHEED
SRI.G.GOPAKUMAR (CHERTHALA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO: 285/04 OF THE MUNSIFF'S COURT,
MAVELIKKARA

EXT.P2: -DO- OF THE WRITTEN STATEMENT IN O.S.NO:285/2004 ON THE FILES OF THE
MUNSIFF'S COURT, MAVELIKKARA

EXT.P3: -DO- OF I..A NO: 2415/05 DT. 24.11.2005 IN O.S. NO: 285/04 ON THE FILE OF THE
MUNSIFF'S COURT, MAVELIKKARA

EXT.P4: -DO- OF THE ORDER IN I.A. NO:2415/05 DT.4.2.2006 IN O.S.NO:285/04 ON THE FILE OF
THE MUNSIFF'S COURT, MAVELIKKARA

EXT.P5: -DO- OF THE JUDGMENT IN W.P(C) 29329/06

jj

/TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C) .No. 10553 OF 2006 F

Dated this the 16th August, 2007.

JUDGMENT

This writ petition is preferred against the order of the Munsiff, Mavelikkara in I.A.2415/05 in O.S.285/05. It was an application for issuance of a commission with a surveyor to measure of the plaint schedule property. The court below dismissed the application on the ground that the resurvey has become final and so the petition cannot be allowed. The said order was passed on 4.2.2006. It is seen that this court has considered this question in another writ petition, W.P(C) 29329/06 which was disposed of on 2.1.2007. As per the operative portion of the order this Court held "when the commissioner was appointed the court could have directed the commissioner to furnish all data including the boundaries in accordance with original survey plan and documents and resurvey plan. It is for the court to decide, after getting the data which is the correct boundary. Ext.P7 order is therefore modified directing the commissioner to identify the property in accordance with the boundaries in the title deed as well as in the original survey plan as well as with reference to the resurvey plan." In the light of the observations contained in the order extracted above, it is necessary for

the court below to issue a commission to measure the properties in accordance with the documents of the parties, old survey plan and the new survey plan, if any and thereafter dispose of the matter in accordance with law after permitting the parties to file objections. Therefore the writ petition is allowed, the order under challenge is set aside, the court below is directed to issue commission and parties are directed to file work memo before the commissioner to note the points which they want.

M. N. KRISHNAN
Judge